

Message Text

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ORIGIN L-03

INFO OCT-01 ARA-16 ISO-00 EB-11 COME-00 JUSE-00 TRSE-00

SS-20 ABF-01 OMB-01 CIAE-00 INR-10 NSAE-00 RSC-01

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DRAFTED BY L/M/SCA:JABOYD:MA

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L/ARA:DGANTZ

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FM SECSTATE WASHDC

TO AMEMBASSY QUITO PRIORITY

INFO AMCONSUL GUAYAQUIL PRIORITY

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E.O. 11652: N/A

TAGS: BEXP, EC

SUBJECT- U.S. GOVERNMENT CLAIM TO PROPERTY IN GUAYAQUIL
PURCHASED BY U.S. COMMERCIAL COMPANY DURING
WORLD WAR II

REF: A) GUAYAQUIL A-19; B) OPINION OF DR. MIGUEL ROCA
OSORIO OF FEB. 20, 1974; C) GUAYAQUIL 393 OF
APRIL 24, 1974

1. LAWYERS FOR STATE DEPARTMENT INCLUDING ASST. LEGAL
ADVISER DAVID A. GANTZ AND DEPARTMENT OF JUSTICE HAVE MET
TO CONSIDER REFERENCED INFORMATION.

2. JUSTICE FINDS CONSIDERABLE MERIT IN HAVING SOCIEDAD
COMMERCIAL ECUATORIANA LTD. (SCAE) BRING ANY CAUSE OF
ACTION DEEMED NECESSARY IN THIS MATTER FOR THE FOLLOWING
THREE REASONS: (A) SCAE, HAVING BEEN THE RECORD OWNER
OF THE PROPERTY SINCE 1944, HAS A DIRECT AND CLEAR CLAIM
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TO THE PROPERTY OR JUST COMPENSATION. IF THE TITLE

TO THE PROPERTY WERE TRANSFERRED TO THE USG SOME TWENTY-NINE YEARS AFTER THE ORIGINAL LEASE WAS REGISTERED AND WITHIN WEEKS OF THE RUNNING OF THE STATUTE OF LIMITATIONS RESULTING FROM THE LEGISLATIVE DECREE OF JULY 28, 1969, THE TRANSFER MIGHT BE CHARACTERIZED AS A SHAM, AND COULD RAISE QUESTIONS CONCERNING THE ORIGINAL AGREEMENT WHEREBY THE U.S. COMMERCIAL COMPANY (USCC) OBTAINED THE USE

OF THE PROPERTY THOUGH THE PROPERTY WAS HELD IN THE NAME OF SCAE, (B) SHOWING THAT THE USG IS THE RIGHTFUL OWNER AS SUCCESSOR IN INTEREST TO USCC THOUGH FEASIBLE COULD PROVE DIFFICULT BEFORE ECUADORIAN COURTS. BEST PROOF WOULD PROBABLY BE AN AFFIDAVIT BY A USG TREASURY OFFICIAL STATING THAT THE INTERESTS OF THE USCC WERE TRANSFERRED TO THE RECONSTRUCTION FINANCE CORPORATION IN 1945 WHICH IN TURN WAS DISSOLVED IN 1954 WITH ALL RIGHTS AND ASSETS PASSING TO THE TREASURY DEPARTMENT AND THE BUDGET BUREAU OF THE USG, (C) SUBSTANTIAL RISK EXISTS THAT USG WILL HAVE TO PAY CONSIDERABLE AMOUNTS OF BACK TAXES AND TRANSFER TAXES PRIOR TO KNOWING OUTCOME OF THIS CASE.

3. THOUGH MR. GANTZ RECALLS LAWYER ROCCA ASSURING THAT SUCH TAXES COULD BE MADE CONTINGENT UPON THE SUCCESSFUL OUTCOME OF THIS CASE, JUSTICE FROM EXPERIENCE IN OTHER SPANISH SPEAKING COUNTRIES BELIEVES THAT TAXES MAY HAVE TO BE PAID IN ADVANCE AND THAT USG WOULD BE UNABLE TO OBTAIN ANY EXEMPTION FROM SUCH TAXES IN THAT PROPERTY IS OBVIOUSLY NOT NOW USED FOR DIPLOMATIC OR CONSULAR PURPOSES. EMBASSY SHOULD SEEK TO OBTAIN FURTHER ASSURANCES FROM LAWYER ROCCA OR KINGSLEY FOX THAT THE USG COULD COMMENCE AND CONCLUDE CAUSE OF ACTION PRIOR TO PAYING BACK TAXES AND TRANSFER TAXES. ARE THERE CASE PRECEDENTS OR TREATIES PROVIDING EXEMPTION FROM TAXES WHEN THE PROPERTY IS NOT BEING USED FOR CONSULAR OR DIPLOMATIC PURPOSES? SEE PARA 5 OF REF C. IF SO, PLEASE DESCRIBE IN REPLY AS WELL AS POUCH COPIES. JUSTICE ALSO PERCEIVES POSSIBILITY THAT PURSUIT OF ACTION BY SCAE WOULD NOT RAISE POLITICAL PROBLEMS WHICH MIGHT ARISE IF USG BROUGHT ACTION IN OWN NAME. LIMITED OFFICIAL USE

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4. WE UNDERSTAND THAT SCAE HAS ALREADY STATED THAT SCAE DOES NOT WISH TO BRING CAUSE OF ACTION IN THIS MATTER AGAINST THE GOE, BUT BELIEVE EMBASSY SHOULD APPROACH SCAE AGAIN TO CONVEY THE POSSIBILITY OF SCAE BRINGING THIS ACTION IN NAME OF SCAE ALONE, AND TO EXPLORE WITH SCAE TERMS BY WHICH SCAE WOULD BE WILLING TO BRING ACTION. SUCH TERMS MIGHT INCLUDE PAYMENT OF AN EQUITABLE PORTION

OF ANY COMPENSATION REALIZED FROM SUCH A CAUSE OF ACTION,
ALONG WITH AN ASSURANCE THAT USG WOULD BEAR ALL COSTS
OF LITIGATION.

5. WE ARE SOMEWHAT PUZZLED BY CLOSING PARAGRAPH OF
REF B) WHEREIN ROCA STATES THAT HE QTE COULD NEVER
GUARANTEE THE SUCCESS OF THIS ACTION, NOT ONLY BECAUSE
IT IS EXPRESSLY FORBIDDEN BY DISPOSITIONS IN THE

ORGANIC LAW OF JUDICIAL POWER (ORDINAL 3, ARTICLE 202),
BUT ALSO DUE TO AN INFLEXIBLE NORM OF RESPECT FOR
PROFESSIONAL ETHICS. UNQTE WHAT DOES ORDINAL 3,
ARTICLE 202 SAY? TO WHICH PROFESSIONAL ETHIC WAS ROCA
REFERRING?

6. JUSTICE ALSO VOICES CONCERN OVER FACT THAT SCAE
SENT LETTER TO CONSULATE ON JANUARY 14, 1969, EXTENDING
THE ORIGINAL CONTRACT FOR AN ADDITIONAL 25 YEARS UNTIL
1994, WHEN ORIGINAL LEASE CALLS FOR USCC TO SEND NOTICE
TO SCAE, NOT FROM SCAE TO USCC, TO EXTEND PERIOD OF
ORIGINAL CONTRACT. SEE PARA C OF REF A. SCAE WOULD
APPEAR TO HAVE STANDING TO CHALLENGE USCC (AND THUS USG)
ON PROPER NOTICE OF EXTENSION, BUT WE UNDERSTAND THAT
SCAE WOULD NOT WISH TO DO SO. PLEASE POUCH COPY OF
SAID LETTER TO DEPARTMENT, AS SAME IS NO LONGER
ATTACHED TO REF A.

7. DEPARTMENT DESIRES RESPONSE TO ABOVE BEFORE
CONSIDERING PROCEEDING AS SUGGESTED IN REF C. RUSH

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